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Cultural rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, in accordance with Human Rights Council resolution 19/6.

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Report of the Special Rapporteur in the field of cultural rights

Summary

The present report is submitted pursuant to Human Rights Council resolution 19/6 and focuses on the enjoyment of cultural rights by women on an equal basis with men.

The Special Rapporteur proposes to shift the paradigm from one that views culture as an obstacle to women's rights to one that seeks to ensure equal enjoyment of cultural rights; such an approach also constitutes an important tool for the realization of all their human rights.

The report underlines the right of women to have access to, participate in and contribute to all aspects of cultural life. This encompasses their right to actively engage in identifying and interpreting cultural heritage and to decide which cultural traditions, values or practices are to be kept, reoriented, modified or discarded.

Gender, culture and rights intersect in intricate and complex ways, and cultural rights must be understood as also relating to who in the community holds the power to define its collective identity. The reality of intra-community diversity makes it imperative to ensure that all voices within a community, including those that represent the interests, desires and perspectives of specific groups, are heard, without discrimination.

Preserving the existence and cohesion of a specific cultural community, national or subnational, should not be achieved to the detriment of one group within the community, for example, women. Importantly, combating cultural practices that are detrimental to human rights, far from jeopardizing the existence and cohesion of a specific cultural community, stimulates discussion, which facilitates an evolution towards embracing human rights, including in a very culturally specific way.

The present report analyses notions of gender that restrict the cultural rights of women and proposes a set of questions to be asked whenever gender-biased social arrangements are defended in the name of culture. It includes a series of recommendations and a list of issues to be addressed in assessing the level of implementation, or non-implementation, of the cultural rights of women. Such information could usefully be included in State party reports to the relevant treaty bodies and to the universal periodic review.

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I. Introduction

1. Resolutions 10/23 and 19/6 of the Human Rights Council, establishing, initially as an independent expert, and renewing the mandate of the Special Rapporteur in the field of cultural rights, recognize the right of everyone to take part in cultural life and to enjoy the benefits of scientific progress and its application. Both resolutions recall that no one may invoke cultural diversity to infringe upon human rights guaranteed by international law or limit their scope, and call for the integration of a gender perspective into the work of the Special Rapporteur. The present report focuses on existing challenges to and opportunities for ensuring the right of women and girls to take part in cultural life on the basis of equality.

2. The notion that culture is restricted to certain areas of life, in particular those areas unregulated by the State, and that it is of greater relevance in some societies than in others is a misconception. Culture permeates all human activities and institutions, including legal systems, in all societies across the world. Culture is created, contested and recreated within the social praxis of diverse groups interacting in economic, social and political arenas. It is manifested in individual and collective self-expression, understanding and practices. Delinking culture from the historical processes and contexts in which it is embedded essentializes cultures, which are then presumed to be static and immutable, homogenous and monolithic, apolitical and detached from prevailing power relations.[1]

3. Gender, culture and rights intersect in intricate and complex ways. The tendency to view culture as largely an impediment to women's human rights is both oversimplistic and problematic. By attributing self-propelling agency to "culture" independent of the actions of human beings, it diverts attention from specific actors, institutions, rules and regulations, keeping women subordinated within patriarchal systems and structures. It also renders invisible women's agency in both reproducing and challenging dominant cultural norms and values. Nevertheless, many practices and norms that discriminate against women are justified by reference to culture, religion and tradition, leading experts to conclude that "no social group has suffered greater violation of its human rights in the name of culture than women"[2] and that it is "inconceivable" that a number of such practices "would be justified if they were predicated upon another protected classification such as race".[3] The use of discourses of cultural relativism to challenge the universal legitimacy and applicability of human rights norms is a serious concern (A/HRC/4/34, in particular paras. 19, 42 and 68).

4. The Special Rapporteur wishes to stress that "the critical issue, from the human rights perspective, is not whether and how religion, culture and tradition prevail over women's human rights, but how to arrive at a point at which women

[1] See, in particular, Uma Narayan, "Essence of Culture and a Sense of History: A Feminist Critique of Cultural Essentialism", *Hypatia*, vol. 13, No. 2 (Spring 1998) and the report of the Special Rapporteur on violence against women, its causes and consequences (A/HRC/4/34), para. 6.

[2] Arati Rao, "The Politics of Gender and Culture in International Human Rights Discourse", in *Women's Rights, Human Rights: International Feminist Perspectives*, Julie Peters and Andrea Wolper, eds. (New York and London, Routledge, 1994), p. 167.

[3] Berta Esperanza Hernández-Truyol, "Out of the Shadows: Traversing the Imaginary of Sameness, Difference and Relationalism — A Human Rights Proposal", *Wisconsin Women's Law Journal*, vol. XVII, No. 1 (Spring 2002), p. 142.

own both their culture (and religion and tradition) and their human rights". "The struggle for women's human rights is not against religion, culture, or tradition."[4] Cultures are shared outcomes of critical reflection and continuous engagements of human beings in response to an ever-changing world. The task at hand is to identify how human rights in general, and equal cultural rights in particular, can enable women "to find paths through which we may view tradition with new eyes, in such a way that it will not violate our rights and restore dignity to ... women ... [and] change those traditions which diminish our dignity".[5]

5. The realization of women's cultural rights is closely dependent on the enjoyment of other rights. The reverse is also true. Situated at the juncture of civil and political rights, on the one hand, and economic, social and cultural rights, on the other, women's equal cultural rights are transformative: they are empowering rights, providing important opportunities for the realization of other human rights. This report proposes to shift the paradigm from one that views culture merely as an obstacle to women's rights to one that seeks to ensure equal enjoyment of cultural rights; such an approach also constitutes a critical tool for the realization of all their human rights.

II. Equal cultural rights: challenges and opportunities

6. International standards related to cultural rights are too numerous to be reasserted in this report.[6] However, particular mention must be made of article 13 (c) of the Convention on the Elimination of All Forms of Discrimination against Women, by which States are committed to ensure, on the basis of equality of men and women, the right to participate in recreational activities, sports and all aspects of cultural life. This provision echoes article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights, which stipulate the right of everyone to participate in cultural life and enjoy the benefits of scientific progress and its applications. These provisions have to be applied in accordance with the principle of non-discrimination on the basis of sex, also specified in these instruments and which, according to some scholars, has attained the status of *jus cogens*.[7]

7. As the Special Rapporteur has stated previously (A/HRC/14/36, para. 9), cultural rights protect the rights of each person, individually and in community with others, as well as groups of people, to develop and express their humanity, their world view and the meanings they assign to human existence and development through, inter alia, values, beliefs, convictions, languages, knowledge and the arts,

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[4] Marsha Freeman, "Article 16 CEDAW and the Right to Practice One's Beliefs", in *Women's Human Rights and Culture/Religion/Tradition: International Standards as Guidelines for the Discussion?*, Netherlands Institute of Human Rights (SIM) Special No. 32, Rikki Holtmaat and Ineke Boerefijn, eds. (Utrecht, 2010), pp. 63-64.

[5] R. Aída Hernández Castillo, "National Law and Indigenous Customary Law: The Struggle for Justice of Indigenous Women in Chiapas, Mexico", in *Gender Justice, Development, and Rights*, Maxine Molyneux and Shahra Razavi, eds. (Oxford and New York, Oxford University Press, 2002), p. 57.

[6] See the report of the Independent Expert in the field of cultural rights (A/HRC/14/36).

[7] See, for example, Christine Chinkin, Marsha Freeman and Beate Rudolf, eds., *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (Oxford, Oxford University Press, 2012).

institutions and ways of life. They also protect access to tangible and intangible cultural heritage as important resources enabling such identification and development processes. Cultural rights encompass a broad range of issues, including self-expression and creation; information and communication; language; identity and simultaneous belonging to multiple, diverse and changing communities; the pursuit of specific ways of life; education and training; taking part in cultural life, and the conduct of cultural practices.

A. Culture, identity and gender: a complex interface

1. Individual and collective identities

8. Cultural identity is "important for the well-being and dignity of individuals and communities".[8] Individual identities promote characteristics that distinguish one person from another, while collective identities privilege similarities among the individual members of a group.

9. However, "each individual is the bearer of a multiple and complex identity, making her or him a unique human being and, at the same time, enabling her or him to be part of communities of shared culture" (A/HRC/14/36, para. 23). Collective identities never encompass all the characteristics of any individual: they are formed on the basis of privileging certain parts of individual identities. Whenever people use the pronoun "we", referring to a collectivity, they select those markers of personal identity that highlight their link with a particular group of people. Collective identity plays a central role in concepts and processes of inclusion/exclusion that define who we are and who we are not; who the other(s) is/are; what we can do and what we cannot do.

10. Belonging does not confer equality, however, and every "collective identity" is in a constant state of flux, being defined and redefined in response to external factors and internal reflection. Collective identity thus entails contestations over meanings and definitions, and is always linked to the underlying structures and dynamics of power related to accessing and exercising control over economic, political and cultural resources.[9]

11. Identities, individual and collective, are informed by values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life, but equally by other aspects of human life, such as professional training; economic, social and political engagements; urban or rural environments; wealth or poverty; or, more generally, the particular geographical, socioeconomic and cultural context of a person's life. This is equally true of women and men. It is of vital importance that individuals not be forced to identify themselves in terms of a singular aspect of their identity, such as being female, or of a particular ethnic, religious or linguistic background. Everyone is constituted of a diversity of selves involved in "a constant

[8] Yvonne Donders, *Towards a Right to Cultural Identity?*, School of Human Rights Research Series No. 15 (Antwerp, Intersentia, 2002), p. 39.

[9] Farida Shaheed, "Citizenship and the Nuanced Belonging of Women", in *Scratching the Surface: Democracy, Traditions, Gender*, Jennifer Bennett, ed. (Lahore, Heinrich Böll Foundation, 2007). See also Nira Yuval-Davis, *The Politics of Belonging: Intersectional Contestation* (London, Sage, 2011).

contradictory state of becoming, in which both social institutions and individual wills are deeply implicated".[10]

12. Gender equality analyses consistently emphasize women's diverse identities and related implications. The Beijing Declaration adopted at the Fourth World Conference on Women, for example, acknowledges, in paragraph 32, that women and girls face multiple barriers "because of such factors as their race, age, language, ethnicity, culture, religion or disability or because they are indigenous people". "Intersectional" identities oblige women to deal with multiple and many-layered forms of oppression simultaneously. For example, Traveller women in Ireland face "triple discrimination — as Travellers, as women, and as Traveller women"; more in contact with settled people than men, women are more likely to confront racism from outsiders while being blamed by other Travellers if they speak out against negative internal practices, which is perceived as speaking against the community.[11] A dualistic "either/or" perspective on identity cannot account for the interacting, intersecting and shifting positions of domination and subordination that the same person occupies because of her varied identities.[12]

13. Recognizing and protecting multiple identities helps to resist and overcome political forces, in particular identity politics, which seek to deny any possibility of pluralism within self and society, as well as gender equality.

14. People must be able to thrive "both as an individual and as a member of larger communities". Stressing that "women's full participation in the cultural and political life of the state" is undermined by "the systematic denial of their political, economic, social, civil and other legal rights", scholars insist that human rights must focus on ensuring "personhood" for women, which is both individualistic and relational.[13] This resonates with the notion of "citizen participation" advanced by gender equality advocates and scholars, for example, in Latin America. One obstacle to such participation is that cultural rights have been the "poor cousins" of economic and social rights, receiving scant attention at the national and international levels. Women's cultural inequality, coupled with economic and social inequalities, "makes it difficult, if not impossible, for them to exercise their civil and political rights, to enjoy personal autonomy and to participate in the political life of their community or country".[14]

2. Women, the essentialization of culture and power relations

15. "All societies have to address three incontrovertible facts of life: birth, death and the existence of two sexes (at least). Consequently, all societies are obliged to construct gender systems defining the roles, responsibilities and rights of girls/women and boys/men. Whether of great inequality or more equality, the constructs

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[10] Angela P. Harris, "Race and Essentialism in Feminist Legal Theory", *Stanford Law Review*, vol. 42, No. 3 (February 1990), p. 584.

[11] Niamh Reilly, "Women's Rights as Cultural Rights: The Case of the Irish Travellers", *Human Rights Dialogue*, Series 2, No. 12 (Spring 2005), special issue: "Cultural Rights", p. 17.

[12] Diane Otto, "Rethinking the 'Universality' of Human Rights Law", *Columbia Human Rights Law Review*, vol. 29 (Fall 1997), p. 29.

[13] Hernández-Truyol, pp. 135, 147, 144 and 146.

[14] Gaby Oré Aguilar, "The Economic, Social and Cultural Rights of Women in Latin America: Status and Strategies", *Women's Health Journal*, 1 July 2007, pp. 4 and 11.

of gender play a central role in people's self-definition as a social collectivity",[15] and permeates all aspects of life.

16. The Special Rapporteur notes with concern the tendency, orientalist as well as occidentalist, to essentialize culture. This runs contrary to facts and "overlooks the economic and political underpinnings of women's subordination and the construction of culture within the dynamics of power relations at local, national and global levels" (A/HRC/4/34, para. 20). Like all social constructions, concepts of gender change over time, and according to socioeconomic and geographical contexts. Resisting cultural essentialism requires "the cultivation of a critical stance that 'restores history and politics' to prevailing as historical pictures of 'culture'".[16]

17. Essentialist portraits of culture often depict culturally dominant norms as central components of "cultural identity". Viewing culture and attendant beliefs, including customs, traditions and religious interpretations, as "static" obstructs the realization of women's human rights because it presupposes that particular values, practices and beliefs are "intrinsic" to a given culture and, therefore, immutable.

18. Cultural norms presented in legal disputes or political debates, far from being neutral descriptions of a community's way of life, are "expressions of power relations that are often limited to the dominant voices in a specific social interaction". Such "articulations should be read as competing efforts to preserve certain social, economic, and political arrangements".[17]

19. Women not only physically reproduce the community by giving birth to new members; they are often also tasked with reproducing the dominant culture of these communities.[18] Frequently, the norms and practices assigned through unequal gender roles and rights are projected as essential core values of a particular community, centrally important to collective identity. Cast as the "privileged signifiers" of community differences,[19] women's conformity to the status quo becomes equated with the "preservation of culture" and challenges to existing norms and practices equated with "cultural betrayals". This has several consequences. Those contesting prevailing norms and practices to promote gender equality may be condemned as "cultural traitors". Matters concerning women may remain bound by tradition even after other aspects of social life have undergone significant change.[20] Alternatively, cultural traditions that granted women certain rights, such as rights to/over land, may be weakened or discarded.

20. Scholars highlight that, ironically enough, the cultural practices being upheld today in many countries that experienced colonization are often those that were selected, promoted as general and privileged by the colonial powers. In addition, a number of "traditional" male leaderships derived their authority from colonial

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[15] Shaheed, p. 24.

[16] Narayan, p. 92.

[17] Celestine Nyamu, "How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?", *Harvard International Law Journal*, vol. 41 (Spring 2000), p. 406.

[18] See Nira Yuval-Davis, "The Bearers of the Collective: Women and Religious Legislation in Israel", *Feminist Review*, vol. 4 (1980), pp. 15-27.

[19] Deniz Kandiyoti, "Identity and its Discontents: Women and the Nation", *Millennium — Journal of International Studies*, vol. 20, No. 3 (March 1991), pp. 429-443.

[20] See Narayan.

power.[21] Scholars stress the crucial role of the colonial period in defining contemporary customary law, for example in African countries,[22] and the need to review, analyse and understand the role of political, social and economic institutions involved in the production of culture and the shaping of gender relations. Hence, one conclusion is that "[a]ssertions of culture in family law are best viewed as a matter of current politics rather than descriptions of age-old tradition".[23]

21. The conventional view of perceiving "a radical disjuncture between the spheres of formal law and culture" is misplaced. Such a perception tends to endorse "dominant articulations of culture as accurate representations of a community's way of life", thereby allowing "culture to be defined exclusively by those whose view of culture disadvantages women".[24] Formal law and policy are closely linked to cultural interpretation, and State institutions play an active role in defining culture. Moreover, actual practices on the ground are usually more varied than suggested by formalized versions projected in discourse as well as under the law.

22. Women's role as important signifiers of cultural groups stands in sharp contrast to their lack of influence in relevant decision-making processes and their limited opportunities to further develop cultural life. When women do claim their right to not participate in specific customs, to interpret, amend and reshape the contours of their cultural communities, they often confront disproportionate opposition, including different forms of violence, for acts as apparently simple as freely choosing who to marry, how to dress or where to go. The severity of such reactions stems from the centrality of gender constructs in collective life. The disruption of prescribed gender rules, roles and concepts in fact demands a reconfiguration of the community's collective identity as a whole.

23. Not all women challenge the dominant cultural norms for a number of reasons: they may benefit, at least in part, from the overall arrangements; they may fear the consequences of challenging existing norms and practices or lack the support mechanisms necessary to act; they may not have access to alternative views and ways of life; or they may not adhere to emancipatory values. Consequently, intentionally or unintentionally, women may reproduce and contribute to sustaining harmful practices that violate the rights of other women, in particular their daughters, for example in relation to education, cultural participation and health issues.

B. Opportunities: cultural rights as transformative rights

1. Equal cultural rights for women: key elements

24. Three principal and interrelated components of the right to take part in cultural life elaborated by the Committee on Economic, Social and Cultural Rights[25] and the Special Rapporteur (A/HRC/14/36, A/HRC/17/38 and A/HRC/20/26) are:

[21] See, for example, Narayan; Charu Gupta, *Sexuality, Obscenity, Community: Women, Muslims, and the Hindu Public in Colonial India* (Delhi, Permanent Black, 2001).

[22] Nyamu, p. 405. See also Otto.

[23] Martin Chanock, "Neither Customary Nor Legal: African Customary Law in an Era of Family Law Reform", *International Journal of Law, Policy and the Family*, vol. 3, No. 1 (1989), pp. 72 and 86.

[24] Nyamu, p. 401.

[25] General comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 15.

(a) participation in; (b) access to; and (c) contribution to cultural life. The Special Rapporteur has further elaborated that this includes the right to access and enjoy tangible and intangible heritage. Some key elements with regard to women are as follows.

25. Participation covers not only the right of individuals to act freely, to choose one's own identity and to manifest one's own cultural practices, but also the right not to participate in specific traditions, customs and practices, particularly those that infringe on human rights and dignity.

26. In many ways, the "[f]reedom to participate in cultural life stands at the very core of liberty".[26] Women must have the freedom to join and leave any given cultural community and be associated with different communities simultaneously. As stated by the Committee on Economic, Social and Cultural Rights, "no one shall be discriminated against because he or she chooses to belong, or not to belong, to a given cultural community or group, or to practise or not to practise a particular cultural activity. Likewise, no one shall be excluded from access to cultural practices, goods and services."[27]

27. In the area of freedom of religion or belief, the Human Rights Committee, for its part, considers that

> States parties [to the International Covenant on Civil and Political Rights] must take measures to ensure that freedom of thought, conscience and religion, and the freedom to adopt the religion or belief of one's choice — including the freedom to change religion or belief and to express one's religion or belief — will be guaranteed and protected in law and in practice for both men and women, on the same terms and without discrimination. These freedoms, protected by article 18, must not be subject to restrictions other than those authorized by the Covenant and must not be constrained by, inter alia, rules requiring permission from third parties, or by interference from fathers, husbands, brothers or others. Article 18 may not be relied upon to justify discrimination against women by reference to freedom of thought, conscience and religion.[28]

28. From a human rights perspective, participation must ensure decision-making (A/HRC/20/26, para. 43). Women must enjoy the freedom to create new communities of shared cultural values around any markers of identity they want to privilege, new cultural meanings and practices without fear of punitive actions, including any form of violence. This means that women must be able to embrace or reject particular cultural practices and identities as well as to revise and (re)negotiate existing traditions, values or practices, regardless of their provenance. Active engagement in the cultural sphere, in particular, the "liberty to contest hegemonic discourses" and "given" cultural norms offers women, as well as other marginalized groups and individuals, crucial possibilities to (re)shape meanings. It also helps to build central traits of democratic citizenship, such as critical thinking, creativity, sharing and sociability.[29]

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[26] Madhavi Sunder, *From Goods to a Good Life: Intellectual Property and Global Justice* (Yale University Press, 2012), p. 11.

[27] General comment No. 21 (2009), para. 22.

[28] General comment No. 28 (2000) on equality of rights between men and women, para. 21.

[29] See Sunder.

29. The Committee on Economic, Social and Cultural Rights has emphasized the need to take "appropriate measures to remedy structural forms of discrimination so as to ensure that the underrepresentation of persons from certain communities in public life does not adversely affect their right to take part in cultural life".[30] This suggests that measures are needed to ensure that particular communities are not exclusively represented by members traditionally vested with the power or authority to represent the community, such as religious leaders or community elders, most of whom are male, and that women are equally able to represent their communities.

30. Access covers, inter alia, the right of everyone to know, understand and benefit from the cultural heritage and cultural life of their own communities as well as that of other communities. Accessing and enjoying cultural heritage implies the ability, inter alia, to know, understand, enter, visit, make use of, maintain, exchange and develop cultural heritage; to contribute to the identification, interpretation and development of cultural heritage, as well as to the design and implementation of preservation/safeguard policies and programmes (A/HRC/17/38, para. 79). Access encompasses the right to freely engage with people and to benefit from ideas, events and information beyond those of one's own community(ies), regardless of frontiers and without fear of punitive actions, including from non-State actors.

31. Equal cultural rights would ensure women's ability to seek proactively knowledge and creative human expressions, scientific knowledge, applications and technologies (A/HRC/20/26, paras. 27 and 29) and to widen their horizon, including beyond the cultural communities in which they are born and raised. Women must be able to access cultural goods and resources, institutions and infrastructure that enable them to follow a specific way of life, including in the areas of leisure, sports, culture and education.

32. Information and communication technologies, including the Internet, are especially important for accessing information, establishing and developing contacts with persons with similar views beyond primary communities, as well as expressing oneself and contributing one's own knowledge and ideas.

33. Equal contribution to cultural life entails the ability to use imagination and intellect in both experiencing and producing works and events of one's own choice: spiritual and material, intellectual and emotional, including in all forms of artistic creativity, for example music and literature. Equally important is being able to engage in critical reflection to form conceptions of, and contribute to establishing, key values, norms and standards. Women must have the freedom to undertake scientific research, be recognized as knowledge holders and be able to contribute to the scientific enterprise without encumbrances (A/HRC/20/26, para. 39).

2. Cultural rights as empowering and transformative rights

34. All human communities, including nations, are characterized by a dominant culture that reflects the viewpoint and the interests of those with the power to ensure adherence to prescribed norms. The dominant culture is almost inevitably patriarchal in nature.

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[30] General comment No. 21 (2009), para. 52 (g). See also paras. 21, 22, 25, 49 (a) and (e), 52 (b) and 55 (a) and (b).

35. Every community also has multiple other subcultures, comprising groups which either do not accept or do not live according to, or in complete adherence with, the norms prescribed by the dominant culture. These include, depending on the contexts, ethnic or religious minorities, indigenous peoples, migrants, youth, marginalized populations such as the homeless, women, and groups who consciously reject the main dominant culture, for example human rights activists.[31]

36. Diverse and dissimilarly positioned groups within the same community have differing levels of acceptance of and dissimilar interests in maintaining or changing dominant cultural norms. They also wield differing levels of power and influence. Hence, some minority or "divergent" voices are ignored, or even completely silenced. A crucial question therefore is which groups are recognized and who within these groups is accepted as the legitimate voice of the "community" by the State and other official entities, as well as the international community.

37. To enjoy equal cultural rights, women must become equal participants and decision makers in all the cultural affairs of their own specific communities, and in the wider "general" society. For this, women's other human rights must be ensured, in particular their rights to freedom of movement, freedom of opinion and expression, religion or belief, and freedom of association, and freedom to participate in social, economic and political life, including in the decision-making processes in these arenas.

38. Conversely, realizing women's cultural rights, which encompass the right to transform existing cultural patterns and thinking, is essential for realizing women's human rights more generally. North or South, "[a]ll cultures contain spheres in which is it impossible for the members 'to think that they are thinking wrongly' — things are obvious, self-evident and natural", resulting in zones of self-imposed silences and rules being "adhered to because they are perceived as a moral duty and because they may be sanctioned by, for instance, some people becoming angry if such duties are not performed".[32] Gender equality cannot be achieved without overcoming such internalized obstacles in cultural life and, therefore, without ensuring the realization of cultural rights for women and girls.

39. In this sense, cultural rights are empowering, for they provide individuals with control over the course of their lives, facilitating the enjoyment of other rights.[33] A large part of the transformative aspect of cultural rights is being able to overturn presumed female and male characteristics and capabilities which, to a large extent, determine the scope of activities that a man or a woman can undertake in a given society.[34] This corresponds to the wider goals of the Convention on the Elimination of All Forms of Discrimination against Women. The Convention aims to achieve

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[31] Farida Shaheed, "Violence Against Women Legitimised by Arguments of 'Culture': Thoughts from a Pakistani Perspective", in *Due Diligence and Its Application to Protect Women from Violence*, Carin Benninger-Budel, ed. (Brill, 2008).

[32] Tove Bolstad, "Kar-Contracts in Norway: Agreements Made by Men Concerning Women's Work, Ownership and Lives", Working Papers in Women's Law No. 46, August 1995, University of Oslo, Department of Public Law, Institute of Women's Law, pp. 26 and 27.

[33] Fons Coomans, "Content and Scope of the Right to Education as a Human Right and Obstacles to Its Realization", in *Human Rights in Education, Science and Culture: Legal Development and Challenges*, Yvonne Donders and Vladimir Volodin, eds. (United Nations Educational, Scientific and Cultural Organization, 2007), p. 185.

[34] See, for example, *Women, Culture and Development: A Study of Human Capabilities*, Martha Nussbaum and Jonathan Glover, eds. (Oxford University Press, reprinted 2007).

"transformative equality", that is, overcoming "prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions".[35]

III. Gender stereotypes and the obligation of States to eliminate discrimination

A. Direct, indirect and structural discrimination

40. International law has moved away from a narrow interpretation of the concept of discrimination on the ground of sex. In addition to direct and indirect discrimination between men and women, as noted in the thematic study by the Office of the High Commissioner for Human Rights on discrimination against women, in law and practice, the concept now encompasses "discrimination on the basis of gender stereotypes" as well as "multiple discrimination that specific groups of women face because of their sex or other characteristics" (A/HRC/15/40, paras. 9-11). Furthermore, "the importance of systemic and structural transformation of institutions and attitudes that reflect and entrench discrimination against women" has been stressed (ibid., para. 10) and the concept further developed, notably by the Committee on the Elimination of Discrimination against Women.[36]

41. Direct sex discrimination occurs when an explicit distinction is made between the rights and obligations of men and women, including in legal texts and norms, regulations and institutional practices.

42. Indirect sex discrimination occurs "when a law, policy, programme or practice appears to be neutral but has a discriminatory effect in practice on women, because pre-existing inequalities are not addressed by the apparently neutral measure".[37]

43. Systemic and structural discrimination refers to the ways in which laws and regulations, as well as cultural or religious traditions have constructed and maintained women's disadvantage based on socially and legally entrenched gender stereotypes; it thus overlaps direct and indirect discrimination. With respect to cultural rights, concepts that view males to be the head of household and the authoritative voice on matters relating to culture are especially problematic.[38] Neither direct nor indirect sex discrimination can be overcome without combating systemic and structural discrimination.

44. Structural or systemic discrimination is the most difficult to bring to the surface and to combat, especially in legal procedures. Eliminating this form of discrimination cannot be left to individuals contesting such discrimination in court cases against State or private institutions, including in the area of cultural life. States are under a positive obligation to eradicate all forms of structural and systemic

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[35] Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004) on temporary special measures, para. 7.

[36] General recommendation No. 25 (2004) and general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention.

[37] General recommendation No. 28 (2010), para. 16.

[38] See Rikki Holtmaat and Jonneke Naber, *Women's Human Rights and Culture: From Deadlock to Dialogue* (Intersentia, 2011).

discrimination that may obstruct women's enjoyment of their right to take part in cultural life.[39] The content and scope of this implied obligation needs to be further elaborated, including in international law.

B. Stereotypes restricting cultural rights of women

45. Across the world and throughout history, different visions of men and women, presuming dissimilar capabilities and separate spheres of operation, have defined expectations about appropriate behaviour. While some gender differences are real, most are not, and constructed differences "have served in family and law, in church and state to prevent women from enjoying full personhood"[40] and human rights, including cultural rights.

46. For example, the Special Rapporteur was informed that in some countries, solo female singing has been banned and restrictions have been placed on female musicians performing in public concerts.[41] These prohibitions are unrelated to any inherent difference between men and women. They derive from the socially constructed rules of gender. Similarly, a particular instrument or song, the recounting of a particular story, or practising a particular craft or skill may be restricted to either men or women. The same is true for cultural or religious practices, customs and traditions that prohibit women from engaging in interpreting and applying particular texts, rituals or customs. Likewise, the practice of ancestral medical techniques, sometimes associated with the performance of ritual ceremonies, dancing and the playing of music, may be reserved for men, possibly leading to the exclusion of women from medical and pharmaceutical knowledge.[42]

47. For many women, the enjoyment of cultural rights is impeded by de jure or de facto restrictions on their right to freedom of movement. Socially constructed gender normative rules may exclude women from public spaces, hearings or meetings. Women may be denied the possibility of being a member, participating in deliberations, or voting in particular cultural or religious institutions. Participation in public life may be obstructed by a fear of sexual harassment or violence and by social or religious "moral policing". Equally, however, participation in cultural activities may be hampered by a lack of facilities such as inadequate public toilets for women at the venues of cultural or sporting events such as stadiums. More specifically, formal and informal restrictions may prohibit women from driving a car, or travelling in buses, trains or planes without being accompanied by a male relative.[43]

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[39] Under the Convention of the Elimination of All Forms of Discrimination against Women, articles 2 (f) and 5 (a), in conjunction with article 13 (c); see Rikki Holtmaat, "Article 5 CEDAW and Culture/Religion/Tradition", in Holtmaat and Boerefijn, pp. 15-39.

[40] Hernández-Truyol, pp. 111, 133-134 and 483.

[41] Freemuse, www.freemuse.org/sw36684.asp.

[42] See, for example, Valentine M. Moghadam and Manilee Bagheritari, "Cultures, Conventions and the Human Rights of Women: Examining the Convention for Safeguarding Intangible Cultural Heritage, and the Declaration on Cultural Diversity", United Nations Educational, Scientific and Cultural Organization (UNESCO) Social and Human Sciences Sector (SHS) Papers in Women's Studies/Gender Research No. 1 (UNESCO, March 2005), in particular the appendix table.

[43] See Marsha A. Freeman, "The Human Rights of Women in the Family: Issues and Recommendations for Implementation of the Women's Convention", in *Women's Rights, Human Rights*.

48. Women remain underrepresented in the fields of science, culture and the arts, even in countries with relatively long histories of formal and legal equality. For example, some research suggests that women have an equal chance to get their papers published in peer-reviewed international journals only when the sex of the author(s) is absolutely unknown to the reviewers.[44] Besides, although there are a significant number of female authors of literary prose or poetry, fewer women win literary prizes than men.[45] Opportunities to contribute to cultural life do not seem to be equal in the creative arts such as music, the fine arts and performing arts, or in mainstream media, in either public institutions or the private sector.[46] In some cases, cultural activities conducted mainly by women, such as storytelling, are marginalized.[47]

49. In the area of sports, factors contributing to gender-unequal opportunities include differentials in budgetary allocations for facilities, training and opportunities for girls and women, on the one hand, and boys and men on the other; unequal prizes for female and male events in the same sport; as well as unequal media coverage.

50. In the view of the Special Rapporteur, more attention should be paid to situations where publicly disseminated reports on cultural, scientific or sporting activities or events, including cultural and artistic performances and practices, mainly depict the participation of men. Media coverage may underrepresent women's role in creating, transmitting, performing and safeguarding cultural practices and expressions, as well as their role in scientific research and applications.[48]

51. Women's imperative to maintain belonging to a particular community (or communities) is intensified when they have little direct interaction with State institutions and are kept ignorant about their rights. Gendered systems of socialization and education may discourage women and girls from expressing their views and asserting their right to actively engage in interpreting cultural heritage and deciding which aspects are to be retained and which need to be altered or discarded altogether. Without linkages and alternative reference points outside their immediate community-bound circles and without access to support systems, women may feel compelled not to criticize or contravene particular cultural practices or customs. Fear that any divergence from their prescribed role will result in social or legal punishments, or in being ostracized and losing their community belonging is a powerful disincentive. Women and girls must not be obliged to choose between community belonging and citizenship, or between any of their other identities. As the primary guarantors of rights, States have the predominant role in ensuring that women as well as men recognize women's right to be rights claimants, in assisting women and girls to claim and exercise their rights and in supporting women to reshape the various communities they desire to be a part of.

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[44] Lutz Bornmann, Ruediger Mutz and Hans-Dieter Daniel, "Gender differences in grant peer review: a meta analysis". Available at: http://arxiv.org/vc/math/papers/0701/0701537v2.pdf.

[45] The Nobel prize for literature has been awarded to a woman only 12 times since it came into existence in 1901. See www.nobelprize.org/nobel_prizes/lists/women.html.

[46] For the literary arts, see the statistics presented at VIDA Women in Literary Arts, www.vidaweb.org/the-2011-count.

[47] Moghadam and Bagheritari, p. 5.

[48] See, for example, in the field of intangible cultural heritage, ibid., p. 6.

52. Legal pluralism can be problematic when communal or tribal courts or community elders are authorized to apply or implement "traditional" or "customary" values, norms and practices. The negative "impact of multiple legal systems, with discriminatory customary and religious laws and practice", on women was noted, for example, at the 15-year review of the Beijing Declaration and Platform for Action, held in 2010. However, a stereotypical approach may be unconsciously applied even within integrated singular legal systems.

53. It is worth noting in this respect that some constitutional frameworks providing for legal plurality have managed to institute a fairer balance between gender equality and recognizing cultural and religious identities. For example, South Africa recognizes the validity of traditional authorities and the right to enjoy and practise one's own culture, but enables these to be challenged under the South African Bill of Rights. The Constitution of Ghana recognizes a right to practise one's culture while prohibiting customary practices that dehumanize or injure the physical or mental well-being of any person. The Constitution of Uganda, addressing the tension between women's rights (art. 33) and the right to practise culture (art. 37), explicitly prohibits "laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status" (art. 33 (6)).

54. The Special Rapporteur notes that despite her research, she was not able to gather sufficient information on best practices developed at the national level, both by governmental authorities and non-governmental actors, to enhance the realization of the cultural rights of women on an equal basis with men. She fears that this, in itself, reflects a general lack of interest in the issue, despite the enormous potential that the realization of cultural rights has for women.

IV. Universality, equal cultural rights of women and cultural diversity

A. The pre-eminence of the principles of non-discrimination and equality

55. Equality and non-discrimination on the basis of sex are paramount principles in international and regional human rights law. States have the obligation under international law to put an end to stereotypes that lie at the root of multiple discriminations, as recognized in particular in article 5 of the Convention on the Elimination of All Forms of Discrimination against Women.

56. It is essential to recall that international human rights norms provide a clear negative answer to the question of whether restrictions on the cultural rights of women, which ultimately amount to restrictions on the principles of non-discrimination and equality, may be legitimately imposed under international law to preserve cultural diversity.

57. International documents repeatedly stress that respect for cultural rights or cultural diversity may not undermine the universality of human rights since these rights belong to all persons, without any discrimination. Most importantly, the Vienna Declaration and Programme of Action, in Part I, paragraph 5, states: "While the significance of national and regional particularities and various historical,

cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms".[49] It further stresses, in Part II, para. 38, the importance of "the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism".[50]

58. Another important reference is the UNESCO Convention on the Protection and Promotion of Cultural Expressions, which states in article 2:

> Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.

59. Other important references include article 4 of the Declaration on the Elimination of Violence against Women prohibiting States from invoking custom, tradition or religious considerations to avoid their obligations; various General Assembly resolutions in the area of combating all forms of violence against women;[51] the work undertaken by the Special Rapporteurs on violence against women, its causes and consequences (most notably A/HRC/4[illegible]1 and A/HRC/17/26, paras. 36 and 45) and on freedom of religion or belief (E/CN.4/2002/73/Add.2, in particular para. 58, and A/HRC/13/40, in particular paras. 37, 45, 46 and 58). Articles 44 and 46 of the United Nations Declaration on Indigenous Peoples, stipulating that all the rights and freedoms recognized in the Declaration are equally guaranteed to male and female indigenous individuals and that limitations to the exercise of rights shall be non-discriminatory, must also be mentioned.

60. As she stated in her first thematic report to the Human Rights Council, the Special Rapporteur stresses that ensuring the mutual protection of cultural rights and cultural diversity shall be based on (a) the recognition of the diversity of cultural identities and expressions; (b) equal treatment and respect for the equal dignity of all persons and communities, without discrimination based on their cultural identities; and (c) openness to others, discussion and intercultural exchanges (A/HRC/14/36, para. 30). Cultural diversity is not a justification for practices that violate women's human rights; not all cultural practices can be considered as protected in international human rights law, and cultural rights may be subject to limitations in certain circumstances (ibid., paras. 30-35). Stated more explicitly: the principle of non-discrimination, which lies at the root of the principle of universality of human rights, must always be respected.

61. Preserving the existence and cohesion of a specific cultural community, national or subnational, should not be achieved to the detriment of one group within

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[49] See also the preamble to and article 5 of the UNESCO Declaration on Cultural Diversity.

[50] The Beijing Platform for Action, in paragraph 9, expresses similar viewpoints, but adds that "full respect for various religious and ethical values … should contribute to the full enjoyment by women of their human rights". See also Otto.

[51] Recent examples are resolutions 63/155, para. 9, and 65/187, paras. 8 and 16 (b). See the report of the Secretary-General on intensification of efforts to eliminate all forms of violence against women (A/65/208).

the community, such as women, especially when that group is unable to participate effectively in decision-making processes. Combating cultural practices detrimental to human rights, far from jeopardizing the existence and cohesion of a specific cultural community, stimulates discussion that facilitates a reorientation of culture towards embracing human rights. Indeed,

> an engagement with culture does not erode or deform local culture but rather challenges its discriminatory and oppressive aspects. ... Negotiating culture with human rights concerns inherently questions, delegitimates, destabilizes, ruptures and, in the long run, destroys oppressive hierarchies. It also contributes to harnessing the positive elements of local culture to advance human rights and gender equality, a process that also revalidates the culture itself (A/HRC/4/34, para. 53).[52]

62. The justification for direct discrimination against women by reference to culture or religion — which, according to information provided to the Special Rapporteur, continues — should be eliminated. In particular, the Special Rapporteur considers that the time has come to question the existence of legal norms that authorize distinguishing between women and men, including in the internal affairs of institutions that are based on a religious ethos or cultural identity; in many instances, this may lead to excluding women from taking part in the interpretation or development of cultural or religious life.

63. Claims that such distinctions may not be based on the idea of inferiority or superiority of either of the sexes should be analysed with great scrutiny, for example, using the guidelines suggested in paragraph 68 below. In this regard, the statement made in article 13 (d) (ii) of the Convention for the Safeguarding of the Intangible Cultural Heritage, according to which access to cultural heritage should be ensured "while respecting customary practices governing access to specific aspects of such heritage", cannot be interpreted as permitting gender-based discrimination (A/HRC/17/38, para. 76). It is essential to ensure that distinctions do not lead to indirect or structural discrimination against women and girls.

B. Asserting the principle of equality: essential but insufficient

64. Despite the near universal ratification of the Convention on the Elimination of All Forms of Discrimination against Women, a "deep schism" between the legal provisions of equality and women's lives has persisted across time and cultures, including in the international sphere; women simply do not enjoy the universal human rights to which they are entitled globally or locally, in the West or the East, the North or the South.[53] The Special Rapporteur is of the view that this is at least partly because women do not enjoy equal cultural rights.

65. The principle of universality of human rights can be a vehicle for building consensus, pluralism and democracy to enable women's attainment of full personhood through, inter alia, their cultural rights. The challenge, however, is that the complexities of gender inequality and the many layers and arenas it operates in cannot be addressed through a simple "one size fits all" theoretical model. Merely asserting the principle of "equality" is insufficient. Far greater and more rigorous

[52] See also Holtmaat and Naber.

[53] Hernández-Truyol, p. 120.

attention needs to be devoted to formulating and implementing culturally relevant measures that catalyse transformative equality processes in each particular area of discrimination. It is suggested therefore that there is a need to understand universality as a transformative dialogue in which disparities in power are acknowledged, the diversity of the world is recognized and positively asserted, and the material necessities for ensuring human dignity are also addressed.[54]

66. Particularly in the field of cultural rights, where a large part of the discrimination is structural or systemic, the principle of equality needs to be embraced in society, not just in law. This requires a complex interrogation of the contextual framework to pave the way for multidimensional and culturally sensitive "legitimacy norms", that is, "norms that are determinate because they have input from and thus consent of those governed by the rules, which will, in turn, result in adherence to the norms".[55] It must be stressed that the process of cultural legitimization and change inevitably takes place within a political context.[56]

67. Issues of legitimacy are a concern of gender equality advocates and women's rights movements. Research indicates that women's empowerment initiatives derive legitimacy from accounts of history highlighting women's contributions and challenges to the status quo and religion, but equally State commitments to gender equality.[57]

68. Human rights practice must guard against imposing outsiders' ideologies, but also against shielding from criticism community practices and norms that perpetuate women's subordination. It needs to incorporate simultaneously an internal discourse to find legitimacy within all cultures and cross-cultural dialogue as a reciprocal sharing of perspectives. The positing of cultural diversity and the universality of human rights as either irreconcilable or mutually exclusive must be unequivocally rejected. Whenever "gender-biased social arrangements are defended in the name of culture, the purported cultural norms need to be challenged"[58] by asking, inter alia:

- Do the purported cultural norms reflect an actual social practice?
- Are they representative of the community, or are they simply a generalization of the narrow interests of a few? In other words, is there a uniform interpretation of the source and nature of the practice/norm?
- Whose power is preserved through the use of the purported cultural norms?
- Who is challenging the practice/norm (outsider/insider, oppressed and/or marginalized person(s) within the community) and what are the claimed harmful outcomes of the practice/norm?

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[54] See, for example, Otto; Nyamu; and Abdullahi An-Na'im, "What Do We Mean By Universal?", *Index on Censorship*, 4/5 (September-October 1994).

[55] Hernández-Truyol, p. 162.

[56] Abdullahi An-Na'im, "State Responsibility Under International Human Rights Law to Change Religious and Customary Laws", in *Human Rights of Women: National and International Perspectives*, Rebecca Cook, ed. (Philadelphia, University of Pennsylvania Press, 1994).

[57] Women's Empowerment in Muslim Contexts: Gender, poverty and democratisation from the inside out, available at www.wemc.hk.com.

[58] Nyamu, p. 59. See also Partners for Law and Development, "Intersections Between Women's Equality, Culture and Cultural Rights", Report of the South Asia Plus Consultation on Culture, Women and Human Rights, 2-3 September 2010, Dhulikhel, Nepal.

- Is the label of culture being deployed to stifle a desirable and necessary political debate?

69. As previously stated by the Special Rapporteur, identifying exactly which cultural practices should be considered as being contrary to human rights is not always a simple task. It requires policies that unequivocally support an informed, open and participatory debate within all societies and communities so that cultural norms and practices detrimental to the enjoyment of human rights can be challenged. It also requires an independent judiciary able to adopt an informed decision on the basis of an explicitly human rights legal framework, and taking into consideration international human rights law and practice.

70. Cultural diversity is not to be confused with cultural relativism. The cultural diversity within a community and within each individual is at least as important as diversities across communities. These diversities must be vigorously respected, protected and promoted, for they are the kernels of a democratic order. In this regard, it must be remembered that despite the paucity of interaction between States and female citizens in many countries and areas of life, the State is a crucial source of legitimacy for women's cultural rights.

71. The reality of intra-community diversity makes it vital to ensure that all voices within a community are heard without discrimination in terms of representing the interests, desires and perspectives of that particular community. Women must be equally empowered to decide the criteria for, and conditions of, belonging to communities of shared cultural values, and to decide the normative content of values and the contours and context of practices that respect, protect and promote their human dignity.

V. Conclusion and recommendations

A. Conclusions

72. **The effective implementation of human rights standards requires measures that transform legislation into reality.**

73. **Human rights are always implemented and enjoyed within specific local cultural and socioeconomic conditions. They have to be realized within, and are thus contingent upon, the factors and dynamics operative on the ground, including local knowledge and practices, and specific cultural traditions, values and norms. Ensuring the cultural rootedness of human rights, in particular women's cultural rights, requires ownership of internationally established human rights among all communities. Human rights have to be "vernacularized",[59] including through "initiatives that ground human rights concepts in diverse cultural traditions, in a culturally relevant lexicon and**

[59] See, for example, P. Levitt and S. E. Merry, "Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States", *Global Networks*, vol. 9, No. 4 (October 2009), pp. 441-461 and M. Goodale, "Locating Rights: Envisioning Law Between the Global and the Local", in *The Practice of Human Rights: Tracking Law Between the Global and the Local*, M. Goodale and S. E. Merry, eds. (Cambridge, Cambridge University Press, 2007).

philosophical vocabulary".[60] This demands close cooperation between all relevant State and non-State actors in society.

74. The continuing development of human rights standards should be informed by the cultural diversity of humankind while recognizing that cultures are always dynamic: people's perceptions, views and actions, rather than abstracted "culture", drive social, economic, political and cultural developments. In the same way that all human rights standards constantly evolve, cultural beliefs and understandings, normative rules and values, as well as practices are continuously created, contested and (re)interpreted. In transforming their culture(s) by adopting new ideas and modes of operation, concerned people often continue to draw upon the moral and spiritual resources within their own traditions.

75. Women's perspectives and contributions must move from the margins of cultural life to the centre of the processes that create, interpret and shape culture. In order to ensure that the dominant culture of their societies is based on gender equality, the tendency to marginalize women's concerns and silence their voices must be overcome, obstructions impeding their equal participation in public life eliminated and their underrepresentation in the institutions and processes defining the culture of their communities surmounted. Women must be recognized as, and supported to be, equal spokespersons vested with the authority to determine which of the community's traditions are to be respected, protected and transmitted to future generations.

76. Measures are required to support and enhance the cultural legitimacy and symbolic validation of new tools and interpretations that enable practices harmful to women to be surmounted. These may include, for example, promoting knowledge about international human rights standards, revising historical narratives to reflect cultural diversity and highlight women's contributions, and documenting the actual diversity of practices and making these known. It is particularly important to support women's transformative initiatives: to listen to local women and build on the tools and terminology they use, including elements to be retrieved from cultural heritage that may have fallen into disuse.[61]

77. It is important to link the right to take part in cultural life with women's equal rights in the area of public and political life, as well as family life. These are intricately interlinked: "In all nations, cultural traditions and religious beliefs have played a part in confining women to the private spheres of activity and excluding them from active participation in public life."[62]

78. Women's cultural rights provide a new framework for promoting all other rights. The realization of equal cultural rights for women would help to reconstruct gender in ways that transcend notions of women's inferiority and subordination, thereby improving conditions for the full and equal enjoyment of their human rights in general. This requires a shift in perspective: from

[60] Farida Shaheed, "Reflections on human rights, traditional values and practices", contribution circulated at the workshop on the traditional values of humankind (A/HRC/16/37), p. 5.

[61] Oral information provided by anthropologist Jeanette Kloosterman, Oxfam Novib.

[62] Committee on the Elimination of Discrimination against Women, general recommendation No. 23 (1997) on women in political and public life, para. 10.

seeing culture as an obstacle to women's human rights to ensuring women's equal cultural rights.

B. Recommendations

79. **The Special Rapporteur recommends that States review the following issues so as to assess the level of implementation, or non-implementation, of the cultural rights of women in their territories on a basis of equality. States should adopt adequate measures in response, taking into consideration their three-fold obligations to respect, protect and fulfil the cultural rights of women, on the basis of equality with men:**

(a) **Restrictions on women wishing to undertake any form of art and self-expression, to enter cultural heritage sites or premises, to participate in cultural events or ceremonies and to engage in interpreting and applying particular texts, rituals or customs. This includes identifying cultural and religious practices, customs and traditions that prohibit such engagement by women;**

(b) **Ensuring women's mobility, in particular to attend or participate in cultural activities, and steps taken to facilitate their attendance/participation;**

(c) **The ability of women to access their own cultural heritage as well as that of others through, in particular, their right to information and their access to the Internet;**

(d) **The existence of rules or customs prescribing different educational content or levels for girls and boys;**

(e) **Measures adopted to ensure that women participate, on an equal basis with men, in identifying and selecting what constitutes cultural heritage, in assigning meaning to such heritage and in the decisions relating to what should be transmitted to future generations;**

(f) **The ability of women to engage freely with people, ideas and events beyond their own family and community, to be part of one or more cultural communities of their choice and to join and leave these communities, including religious communities, at will;**

(g) **The ability of women to participate in decision-making within their own communities and to contribute to cultural life, through the exercise of their freedoms of expression, association and thought, and their right to education;**

(h) **The freedom of women to refuse to participate in traditions, customs and practices that infringe upon human dignity and rights, to critique existing cultural norms and traditional practices and to create new cultural meanings and norms of behaviour;**

(i) **The existence of formal or informal dress codes for women and men and the consequences for contravening these on girls and women as compared to men;**

(j) **The resources, including financial support, given to women in comparison to men in the fields of art, sport and science. For example, States are encouraged to assess sports facilities in schools and communities to which**

girls and women have equal access; whether sufficient support is given to events promoting women's leisure activities and creative expressions such as song, dance, poetry and theatre; and whether female artists are well represented on radio and television and in cultural events.

80. **The Special Rapporteur further recommends that States:**

(a) **Abolish or modify laws and regulations, policies and programmes that are based on, apply or sustain negative or harmful gender stereotypes, including through legislative measures and social policies and information and educational programmes;**

(b) **Adopt all measures necessary to eliminate gender stereotyping among State officials in all fields and at all levels, in particular those dealing with education, culture, sports and science, and ensure that women's contributions to culture are fully reflected, especially in educational institutions, textbooks and curricula, in particular in the teaching of history;**

(c) **Exercise due diligence with respect to any unequal treatment or discriminatory conduct by private actors, paying special attention to the role of cultural, religious and educational institutions as well as the media;**

(d) **Take action against institutions, and non-State actors, that threaten women who critique harmful practices, claim their right to participate in cultural life or wish to leave a cultural community;**

(e) **Ensure equal opportunities for girls and women to access, take part in and contribute to cultural activities and an equal share of State support, in particular in the fields of arts, sports and the sciences;**

(f) **Make explicit reference to the Convention on the Elimination of All Forms of Discrimination against Women in all normative and policy frameworks relating to cultural diversity and group-based rights (A/HRC/4/34, para. 72);**

(g) **Withdraw all reservations to this Convention that have been entered with reference to culture, tradition, custom and/or religion (ibid.);**

(h) **Ensure that diverse women's voices within specific communities are heard and that their human rights are not sacrificed in the name of culture (ibid.);**

(i) **Ensure that respect for cultural diversity does not translate into a pluralistic legal system allowing for customary laws, traditions or practices that contravene women's human rights, including their cultural rights;**

(j) **Ensure that when there are competing views regarding what constitutes cultural norms and practices, the role of arbiter is played by individuals or entities that uphold women's equal rights;**

(k) **Ensure the training of judges in the area of human rights law and gender, in particular to disallow any "cultural defences" of direct or indirect discrimination against women that adversely affects their right to take part in cultural life;**

(l) **Enhance the participation of women, including through temporary special measures, in the legal professions and at all levels of the judiciary, as an**

important means of increasing women's contribution to the process of legal interpretation of the content and scope of human rights, including cultural rights;

(m) **Engage civil society women's groups and community leaders, traditional and religious leaders, as well as teachers and the media in dialogues about cultural changes "so as to facilitate social and cultural change and the creation of an enabling environment that is supportive of gender equality".**[63]

81. **The Special Rapporteur hopes that this report may serve as a catalyst for the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women to address more systematically the issue of the cultural rights of women. In addition, such information should be included in States' reports for the universal periodic review as well as to relevant treaty bodies, in particular the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women.**

82. **The Special Rapporteur suggests that the Committee on the Elimination of Discrimination against Women envisage adopting, when its schedule permits, a general recommendation on article 13 (c) of the Convention, possibly in relation to articles 2 (f), 5 (a) and (b), and 10 (c).**

83. **The Special Rapporteur suggests that interested Governments, national human rights institutions and non-governmental organizations gather good practices enabling women to enjoy their equal cultural rights.**

84. **She encourages academic institutions and scholars as well as civil society groups to gather evidence of the actual diversity of practices and to engage with women to identify measures that can catalyse transformative equality processes in difference spheres of life, in particular, cultural life, and to research the histories of diverse women that showcase their contributions to cultural norms and practices promoting justice for all.**

[63] "Concluding comments of the Committee on the Elimination of Discrimination against Women: Nicaragua" (CEDAW/C/NIC/CO/6), para. 12.